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The War on Drugs



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A Model for Success in the Drug War

By KELLY J. THOMAS, J.D.

In the war against drugs, law enforcement officers at all levels face very well-organized, corrupt, and dangerous criminals. Everyone, from the honest citizen to the government official, wants to see success in this difficult battle.

Over the past 10 years, the operation Panama Express has resulted in the seizure of over 500 tons of cocaine worth an estimated \$10 billion. Authorities have arrested more than 2,000 international drug traffickers

and transporters, mostly Colombians. Additionally, pending capture at open sea, transporters have dropped to the bottom of the Pacific Ocean another 391 tons of cocaine worth another \$7 billion. These statistics demonstrate the success of this Organized Crime Drug Enforcement Task Force (OCDETF).

Joint Efforts

Created in 1982, OCDETFs combine the resources of federal, state, and local law enforcement

agencies to combat the wave of drug trafficking and money laundering affecting the United States. The recently created OCDETF strike forces have authorization to collocate and commingle federal and state agencies to disrupt and dismantle drug organizations designated as consolidated priority organizational targets (CPOTs) and their drug-trafficking and transportation affiliates. The task and strike forces constitute the centerpieces of the U.S.



On 3/18/07, the Coast Guard, in conjunction with the Panama Express Strike Force, seized 42,845 pounds of cocaine—a record seizure—from the freighter Gatun.

attorney general's war on drugs, and they now are supplemented with an OCDETF fusion center designed to gather, analyze, and store drug-related intelligence.

Drug War

The face of Colombian international drug smuggling has changed dramatically over the past 10 years. In the 1990s, 10 major Colombian cartels headquartered in Medellin and Cali coordinated over 80 percent of the cocaine reaching major markets.¹ The cartel structure approximated a pyramid with the leader employing several hundred employees who manufactured cocaine, secured and transported it, and laundered the illicit proceeds.

In the late 1990s, officials from Panama Express and

various federal agencies in New York, Miami, and other cities indicted the leadership in all of the controlling cartels. With the granting of extraditions by the Colombian government, the powerful cartels slowly started to fade, and myriad smaller bosses and drug-trafficking/transportation organizations (DTOs) grew to take their place. Unfortunately, the flow of cocaine rarely lessened because of the astronomical profits available to those in control. Now, each segment of the business is compartmentalized with cocaine owners hiring and sharing independent transporters for the drug treks to Mexico.

Additionally, the face of international drug smuggling has changed in other ways, especially in the modes of cocaine transportation. In the

1980s and 1990s, a principal mode of moving bulk cocaine (1 ton or more) was via Colombian fishing vessels that averaged 65 to 80 feet in length and generally carried 5 to 10 tons of product. These vessels traveled north from Colombia to several hundred miles off the coast of Mexico and transferred the drugs to Mexican fishing vessels.

After numerous successful interdictions of the slow fishing vessels in the early 2000s, the cocaine transporters supplemented their arsenal with go-fast boats similar to American "cigarette" boats; they were 40-feet long with four outboard engines and capable of transporting 2 to 3 tons of drugs. The U.S. Navy and Coast Guard responded with aerial force against these speedy targets, reducing this method of transport.

The traffickers and transporters shifted gears again. Starting in approximately 2005, the DTOs built self-propelled semisubmersible (SPSS) vessels and sent between 3 and 8 tons of cocaine on each trip. These vessels generally were 50-feet long with only 1 foot of a small port area above water. Panama Express made its first seizure of an SPSS in 2005.

Panama Express

Operation Panama Express started in 1995 with an FBI/DEA investigation of three



Special Agent Thomas serves in the FBI's Tampa, Florida, office.

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Federal, state, and
local law enforcement
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enemy as any in the battle
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drug smugglers.
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Successes in the Pacific Ocean

Year	Vessels	Arrests	Kilos of Cocaine Seized
2000	3 FVs, 7 GFs	46	23,960
2001	2 FVs, 7 GFs	47	12,955
2002	5 FVs, 11 GFs	75	35,446
2003	8 FVs, 10 GFs	103	25,748
2004	10 FVs, 13 GFs	131	58,997
2005	11 FVs, 12 GFs, 1 SPSS	138	50,994
2006	11 FVs, 17 GFs, 1 SPSS	127	45,907
2007	12 FVs, 19 GFs, 6 SPSS	115	46,114
2008	5 FVs, 9 GFs, 6 SPSSs	90	32,834
2009	3 FVs, 11 GFs, 11 SPSSs	95	23,018

FV: Fishing vessels

GF: Go-fast boats

SPSS: Self-propelled semisubmersible vessels

This table does not represent scuttled loads, total loads seized in the Caribbean by spin-off investigations, or loads and arrestees submitted to foreign governments for prosecution.

suspicious bank accounts in Naples, Florida. These accounts and many more in Panama belonged to Colombian cocaine transportation boss Jose Castrillon Henao. That investigation led to the indictment in Tampa, Florida, of Castrillon and more than 2 dozen cocaine transporters working in the eastern Pacific Ocean.

Instead of viewing the indictment as a goal or fruition,

Panama Express personnel used it as the genesis of a broad attack against the Colombian cocaine maritime transportation industry. Beginning in late 1999, convicted defendants were given the opportunity and the resources to develop evidence for historical cases and recruit sources for current, actionable intelligence on cocaine transportation operations launching from Colombia

to Mexico. ICE, Coast Guard, and DOD agents and analysts joined Panama Express to work the cases jointly. In February 2000, the Colombian fishing vessel Rebelde was the first seizure, with a cargo of 4.5 tons of cocaine worth \$67,500,000 (\$15,000 per kilo).

Starting in 2000, Panama Express, along with the DOD Joint Interagency Task Force South (JITFS), has had great

success, as illustrated by the chart, which also reflects the changing face of international drug smuggling in the eastern Pacific: the interdiction of Colombian fishing vessels led to the DTOs using go-fast vessels, and then, as U.S. successes mounted against this method, the smugglers built the SPSS vessels to avoid detection. Over time, U.S. maritime enforcement has adapted and increased its interdictions of SPSS vessels, which travel 80 to 90 percent below the sea surface and have become the transportation mode of choice for drug lords.² For continued success, agencies must remain vigilant for new and novel smuggling methods.

Panama Express also uses a secondary tool: strategic indictments and arrests of high-level bosses, supervisors, or coordinators of the seized loads represented in the chart. As of January 2010, over 100 DTO managers have been indicted; arrested, primarily in Colombia; and extradited to the United States to face stiff sentences. Some of the highest-level cartel bosses, including Joaquin Mario Valencia-Trujillo, are serving lengthy U.S. prison sentences for their roles in sending hundreds of loads of cocaine from Colombia to Mexico for transshipment to the United States. Valencia-Trujillo, a former principal of the famed Cali Cartel, was sentenced to 40 years'

imprisonment and ordered to forfeit \$110,000,000 in illicit proceeds. Panama Express and DOJ forwarded the U.S. forfeiture judgment to Colombia, which facilitated the seizure of tens of millions of dollars worth of Valencia-Trujillo's assets.

Suggested Approaches

Some of the procedures and methods used by Panama Express can be considered for use by other strike forces, task

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***Everyone...
wants to see
success in
this difficult
battle.***

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forces, and drug-interdiction teams in their endeavors against international drug smuggling. In maintaining the high level of seizures and indictments over the past 10 years, FBI, DEA, ICE, Coast Guard, and JIATF personnel have learned many hard lessons. Some practices have proven significant in the accomplishments by Panama Express.

- Eliminate agency turf battles by sharing all responsibilities and

successes. For example, assign one agent from each organization to each case to work jointly toward fruition.

- Identify and target support elements for narco-trafficking organizations. Instead of focusing on an entire DTO, requiring years of investigation, task forces can have great success by targeting transportation. For instance, Mexican border smuggling could be exploited with a focus on the trucking industry.
- Develop human sources within the selected support element at all levels, including those at the lowest tier who have access to potential intelligence—even small pieces of the overall puzzle. Sufficiently pay the human sources to offset the extreme risks they take to assist law enforcement. Search for funding from nontraditional sources (e.g., Congress, U.S. executive agencies, military entities).
- Maintain a long-term strategy and always prioritize protection of human sources and confidential procedures over a short-term gain/seizure.
- Seek out assistant U.S. attorneys and prosecutors who agree with the big picture of long-term strategies and provide reasonable

incentives for cooperating defendants. Valuable and trusted cooperators must receive sufficient sentence consideration and other benefits to commit to long-term assistance to U.S. law enforcement.

- At inception, conduct meetings with the highest regional managers of each agency and commit all agreements to writing for division of resources, funding, and personnel. Early agreements are essential for long-term success and elimination of chronic turf battles prevalent among agencies.
- Schedule weekly all-hands meetings to share intelligence, successes, and planning. Develop close, professional relationships within each agency to develop integrated teams.

Conclusion

Panama Express personnel consider their endeavor a war. Federal, state, and local law enforcement agencies face as tough an enemy as any in the battle against international drug smugglers. These criminals are well-financed, corrupt, and deadly.

In *The Art of War*, Sun Tzu explains that waging a successful war requires planning; employing an adaptive strategy; identifying the enemy's weak points; and using spies, or informants. Antidrug task forces must do the same and, if they consider it appropriate, use the listed suggested practices. The most effective strikes against drug smugglers will require exceptional cooperation among officers, agents, managers, and prosecutors. ♦

Endnotes

¹ Sidney Jay Zabudoff, "Colombian Narcotics Organizations as Business Enterprises," *Transnational Organized Crime* 3 (Summer 1997): 23.

² "Semi-Subs, Used to Carry Drugs, May Be Outlawed," *Tampa Tribune*, June 27, 2008, p. 3.

October 18, 2007
Eastern Pacific
59 bales



September 13, 2008
Eastern Pacific
237 bales



FV Rebelde
February 16, 2000
Eastern Pacific
Almost 5 tons



Perspective

Writing Policy and Procedure Manuals in a Small Campus Police Environment

By Robert A. Johnson



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After serving as a law enforcement officer in a large full-service police agency for nearly 40 years, the responsibility for writing policy for a small campus police environment seemed a unique challenge. My job required reviewing and revising existing policy, as well as creating some policies from scratch. What was not obvious in the beginning, however, was the extent that agency cooperation, planning, and organization would be critical to the success of the mission.

Crime fighting in a campus environment normally is category specific: the majority of offenses fall into three or four major categories. University

Mr. Johnson, a retired captain with the Anne Arundel County, Maryland, Police Department, currently serves as a policy analyst with the University of Maryland, Baltimore Police Force.



police officers seldom must exhibit specific procedural knowledge of more than a handful of crimes. I found that writing policies in this environment required specificity with regard to agency requirements, as well as criminal law and procedure. The need to revise, update, and modify many old directives either procedurally outdated or compromised by existing law added to the scope of the mission. For example, policies regarding domestic violence, internal early warning systems, juvenile procedures, pandemics, criminal intelligence, homeland security, incident command, and bias-based profiling required frequent updates to remain consistent with current practices and law enforcement mandates. As a result, new procedures and reporting requirements became part of the revisions, necessitating frequent meetings with command and component personnel.

One expert describes the well-written directive as supplant to a system of best guesses, common sense, and good luck.¹ Policy writers must establish consistency, responsibility, and standardization through well-written policies and procedures as this information will guide behavior and avoid agency sanctions. They must ensure they do not place the first responder in harms way, open the organization to liability, overdirect simple tasks, or saturate agency members with verbiage that does not facilitate further understanding of the subject matter.

A directive should be specific enough to impart agency procedure and capture the essence of current law yet remain flexible enough to allow for appropriate decision making. Therefore, policy

writers must commit time to planning each directive and grouping of directives. Although the task can prove daunting at times, the following chronological steps may help the writing process proceed smoothly with minimal internal resistance and the best chance for success.

Operational Authority

Before any writing or planning begins, the chief executive of the agency should prepare correspondence that will introduce the writer and reflect the job to be accomplished. Although this may prove one of the few times the chief executive will

have direct involvement in the process, all agency members (sworn and civilian) must understand the purpose of the endeavor, the expectation of cooperation, and that the project enjoys the support of their leader.

Information Gathering

Policy writers should acquire an organizational chart early in the process. The chart will become the basis upon which responsibility for work completion

is determined. Therefore, it must be available, updated, and accurate.

Information acquired as a basis for constructing policy and procedure can come from various places. Old manuals, directives, special orders, pamphlets, memorandums, and training materials can facilitate a general understanding of how the agency has responded in the past to specific situations and mandates. Although the collection of static documentation can help policy writers, written documents do not replace one-on-one

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Policy writers must establish consistency, responsibility, and standardization...as this information will guide behavior and avoid agency sanctions.

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meetings with key personnel. Such meetings also can establish relationships not widely known or understood (e.g., as in the case of state regulatory agencies that mandate officer training or federal law that regulates the dissemination of law enforcement records). Information obtained from documents or meetings should become part of the written directive.

Additionally, the influence of standard operating procedures should be limited to standardizing work in an individual component; they usually should not be relied upon to construct written directives. Policy writers should spend minimal time reviewing them. Although their value in assisting with the acclimation of new employees should not be underestimated, the information is not interchangeable.

Manual Organization

As a starting point, leaders should hold a meeting with command personnel who have the authority to require cooperation from agency components. This group should establish ongoing expectations, including dates and times for further meetings, timelines for completion, and discussions about the visual aspect of the written directive (e.g., one column versus two columns, double spacing, headers and footers).

Moreover, a policy writer should request a list of key agency personnel who can provide specific information, easily accomplished if the writer already is employed by the agency. However, if the writer was recently hired, leaders should appoint a sworn liaison officer to assist with information acquisitions.

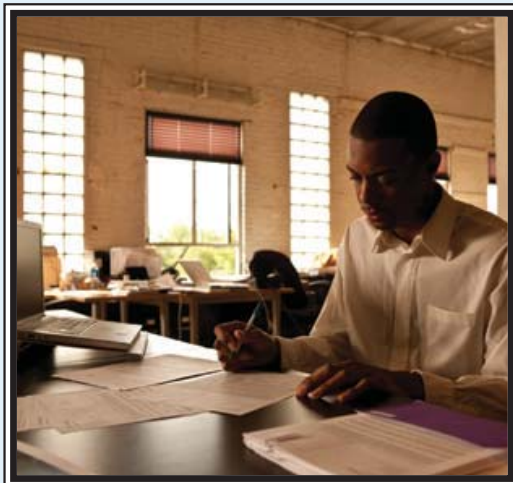
One of the most frequent complaints about agency policy and procedure manuals involves the lack of subject-matter groupings that ultimately leads to frustration when attempting to find a particular passage or procedure. As a result, policy writers should consider grouping like subject matter and presenting the finished product as coherent and user-friendly.

Some agencies experience a lack of accountability for forms, including some rogue or unauthorized ones created by well-meaning individuals or components without benefit of organizational review. The resulting overload of forms and lack of control over the numbers and types of forms used makes it nearly impossible to keep written directives current. As a result, leaders should create a system for approving, numbering, and disposing of unauthorized forms.

Available Resources

Deciding what directives policy writers should write, update, or delete can become a time-consuming task. Leaders should network with agencies of a similar size to review their directives. Often, policies and procedures prove similar between agencies and may only require incidental attention, especially when the policy is consistent with the Commission on Accreditation for Law Enforcement Agencies (CALEA).

In addition, state law enforcement regulatory agencies and training commissions usually maintain resources to assist in policy making



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and often have sample written directives. Departments also can obtain an encompassing array of written directive topics from the International Association of Chiefs of Police (IACP) Policy Center.

The Writing Process

Policy writers should avoid the expression of abstract views, opinions, or verbiage that does not contribute to the understanding of the subject matter. Moreover, they should provide information in a straightforward, simple, and direct way that complements the discussion.

Because the finalized version of the policy and procedures manual likely will be available for citizen review, writers should avoid law enforcement slang or jargon. Further, the words *shall*, *will*, or *must* reflect mandatory action, and the terms *should* or *may* identify some level of personal situational choice.

Each written directive should introduce the subject matter through a statement of purpose followed by a statement of policy. The statement of purpose should offer a clear reason for the topic under discussion, and the statement of policy should provide a brief overview of agency philosophy. Policy is not synonymous with procedure or purpose; these two brief introductory statements are not interchangeable. Policy statements in each directive should begin with the phrase, “It is the policy of...”

Normally, a numerical designation should identify each section of the manual. For example, if section 4 contains all agency directives on the

use of force, every directive in that section should be designated as 4.1, 4.2, 4.3, and so forth. A Roman numeral should identify every major topic, which policy writers should further explain under subtopics identified by letters of the alphabet. All written directives should be numbered consecutively and include effective and revision dates, as well as the signature of the chief executive. A title page, contents section, and index portion also should be included.

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Writing policy and procedures requires a commitment to a specific format that will permit a user-friendly approach....

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Review, Revision, and Submission

The review process should include a senior staff member intimately familiar with the internal organization, as well as its crime-fighting activities. In some cases, the review process may involve several command staff officers, subject-matter experts, and specific component personnel responsible for accomplishing the work as outlined in the directive.

Minor changes to written directives occur over time as they are more widely viewed, and a change in one directive may require a change in others. Policy writers should present the final product to the chief executive for signature upon completion of the entire manual and not submit sections individually.

Availability

If agencies issue the manual as a hard copy, they should use a three-ring binder suited for holding the written directives. This way, each directive easily can be removed when changes occur. Additionally, they should consider establishing

an accessible computer file or e-mail notification system or issuing a CD. For vehicles with mobile data computers, software programs exist that will monitor changes to directives and the associated accountability process.

Conclusion

Writing procedures and policy for campus law enforcement works best when preceded by proper preparation. Before policy writers begin, they must have a clear understanding of how the organization functions and how crime operations and administrative support operations mesh to accomplish the work of the agency. Procedures and policies must be clear and simple and contain

accurate information sufficient to take any situation to fruition without leaving the agency open to civil liability or the individual vulnerable to agency sanctions.

Writing policy and procedures requires a commitment to a specific format that will permit a user-friendly approach to finding information, assessing resources, reviewing, and revising. To that end, the chief executive's authorization of the completed manual and the availability of the manual to all agency personnel will provide the basis for success. ♦

Endnotes

¹ Michael Carpenter, "Put It in Writing: The Policy Manual," *FBI Law Enforcement Bulletin*, October 2000, 1-5.

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Inspirational Leaders Suspend Their Ego

Leadership is not about a person's ego. It is about recognizing what your constituents need and placing yourself in a position with the right mind set to meet those needs. Individuals who put the interests and agendas of others before their own may become leaders through their selfless actions. Leadership occurs everywhere and at all levels. Great leaders do not necessarily seek an official title; rather, their genuine and sincere concern inspires people to follow.

There are leaders I admire who have challenged me

to consistently put forth my best effort. They make my career, welfare, and concerns more important than theirs. Amazingly, some of the finest leaders I have encountered had no idea about the profound impact their leadership and inspiration imparted. Effective leaders influence others to willingly push beyond what they find comfortable. Inspirational leadership is built upon ego suspension and appreciation of the needs of others, not an official title or position. So, leadership sometimes exists in the most unlikely places.

Many law enforcement organizations have collateral programs staffed with truly outstanding and dedicated individuals. I and many of my colleagues have benefited from a first-rate leader who manages a program that serves over 1,100 employees. He not only

processes thousands of financial requests a year but also cultivates relationships with these 1,100 employees, as well as the partnerships with over 250 institutions of higher education.

This influential leader's responsibilities far surpass his pay grade, yet he has inspired so many to reach beyond their comfort zone. Whenever I call him with a conflict or concern, he makes me feel I am his only focus. He


is never too busy to discuss the problem. Without a doubt, you can feel his

customer-oriented enthusiasm. He answers questions via e-mail on weekends and stays late into the evenings facilitating the program.

I have revamped my approach to handling my programmatic responsibilities—with a smile on my face—because of the example he has set. Although he is not as high in title and grade as many of those he serves, he consistently leads and inspires through his ability to place others' needs above his own ego. ♦

Inspiration

Special Agent Robin K. Dreeke, an instructor at the Counterintelligence Training Center and an adjunct faculty member of the Leadership Development Institute, prepared this Leadership Spotlight.



Systematic Pattern Response Strategy

Protecting the Beehive

By ROBERTO SANTOS, M.S.

Traditional police strategies for crime reduction have focused on addressing individual incidents, such as calls for service and crime investigations. The goal is to resolve incidents as they arise and arrest offenders so they can be punished for their crimes. Patrol officers primarily carry out this work with the guidance of first-line supervisors. Mid- and upper-level managers focus on the allocation of resources and the resolution of personnel issues, becoming involved in street-level work mainly during critical incidents.

Over the past 30 years, innovative approaches (e.g., problem-oriented, community-oriented, disorder, and intelligence-led policing, along with Compstat) have been developed that seek to apply crime-reduction strategies beyond isolated incidents.¹ In 2004, the National Research Council review of police approaches found that crime-reduction strategies that employ data and analysis to identify issues larger than incidents (i.e., patterns and problems); focus their efforts in particular places, times, and on

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specific offenders; and prioritize police efforts prove much more effective than traditional methods that are not focused.² Although numerous specific examples of effective crime-reduction efforts implemented for crime patterns and larger problems exist, the basic nature of policing (responding to calls and investigating crimes) has not changed, and few, if any, police departments have *institutionalized* crime-reduction efforts at a larger level than an incident.³

With the limited and shrinking resources that police executives face today, it is necessary, more than ever, for organizations to employ systematic crime-reduction efforts to become more efficient and effective. One method is the systematic pattern response strategy. This is part of a larger model of crime reduction—the Stratified Model of Problem Solving, Analysis, and Accountability—that addresses immediate, short-term, and long-term problems.⁴ This model takes into account the results of police research on traditional, problem-oriented, hot spots, and intelligence-led policing, as well as Compstat, and presents a structure for all police ranks within an organization to systematically address a range of problems.⁵

To address crime and disorder beyond the incident level,

the Stratified Model first distinguishes different kinds of problems for which crime-reduction strategies can be implemented. The problems vary based on their complexity and temporal nature (more complex problems develop over longer periods of time). Importantly, to be most effective, a police department must address concerns at all levels because if smaller, more immediate problems are resolved successfully, they will not become larger, long-term ones.⁶ Thus, the model breaks down activities generating police response into three categories based on their complexity and temporal nature.

1. Immediate activity: Individual calls for service and crimes (individual incidents)
2. Short-term activity: Patterns (groups of similar crimes

taking place in a relatively short time frame linked together by *modus operandi*, offender, location type, and property taken)

3. Long-term activity: Problems (set of related activities occurring over a longer period of time resulting from individuals' routine behavior and the systematic opportunities for crime created by their behavior)

The primary conceptual component of the Stratified Model is that various ranks within the police organization are responsible and held accountable for implementing appropriate strategies for addressing the different levels of problems. Higher ranks in the organization that have more authority and experience address more complex issues, and the

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Patterns represent the core component of the Stratified Model and crime-reduction efforts because they are realistic and manageable for police response....

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Detective Lieutenant Santos serves with the Port St. Lucie, Florida, Police Department.

traditional hierarchical structure of the organization ensures that the implementation of crime-reduction strategies takes place.⁷ Separating and distinguishing the types of problems allows a variety of personnel within the agency to provide different analyses, responses, and accountability. To help illustrate this model, the author highlights one aspect, patterns.

ADDRESSING PATTERNS

Patterns consist of two or more similar crimes related by modus operandi, victim,

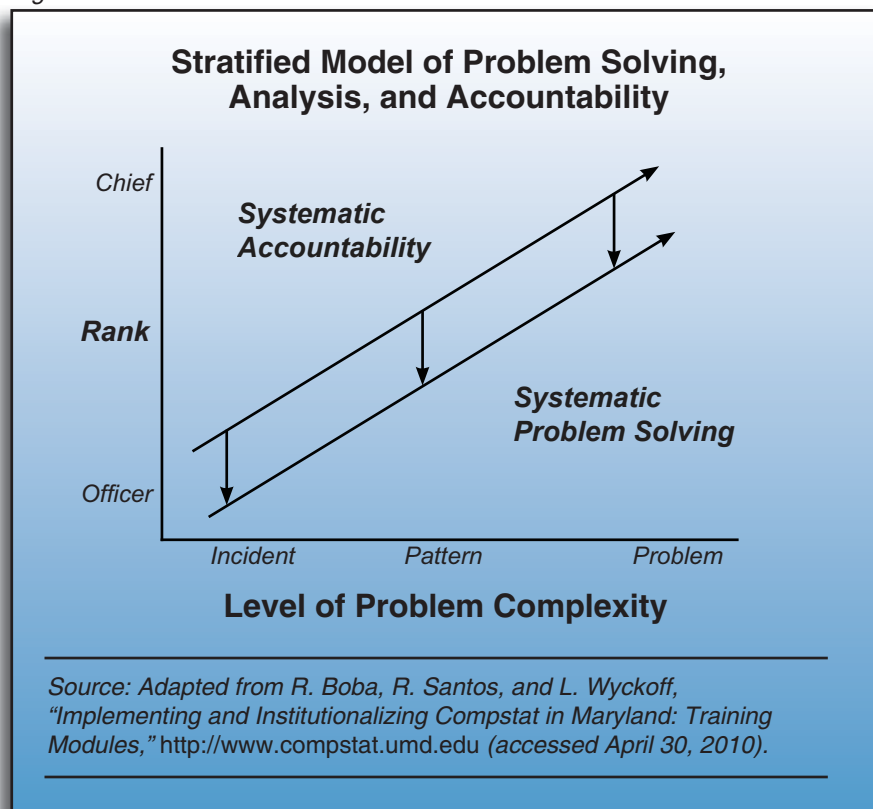
offender, location, or property that typically occur over days, weeks, or months and focus on offenses wherein victims and perpetrators do not know one another, such as stranger rape, robbery, burglary, and grand theft.⁸ Patterns represent the core component of the Stratified Model and crime-reduction efforts because they are realistic and manageable for police response; research has shown that addressing hot-spot patterns, in particular, can prove successful;⁹ and the police, the community, and the media are

most concerned about their immediate resolution (e.g., a serial robber or burglar operating in the past 2 weeks in a specific area). Because patterns occur in the short-term, effective responses also must happen quickly and with purpose. In addition, if stopping patterns from continuing is important, an appropriate amount of resources must be allocated.

The Beehive Effect

The author offers his strategy, the Beehive Effect, as a way that police organizations could react to crime patterns. When threatened, bees respond by exiting the hive with enough resources (bees) to expel the threat and protect the colony. Not sparing any chance of failure, they do not send one or two bees to investigate the threat nor react days after it occurs. Instead, they respond immediately with a significant amount of force. The resources necessary to protect the hive are enormous, immediate, and aggressive. The bees respond with purpose, teamwork, and one goal in mind: to swarm and eradicate the threat. Finally, because *every time* the response is the same (immediate and severe), everyone knows not to threaten a beehive. The author believes that police organizations also should take this approach.

Figure 1



Similarly, when a pattern is identified (e.g., five related residential burglaries in an area during a week or three street robberies of elderly people by the same suspect), it represents a threat to the community and, as a result, to the police. The Beehive Effect would dictate that police respond immediately to a pattern *every time* with an appropriate amount of resources to neutralize the threat. All divisions in the police organization would respond cooperatively to patterns based on their capabilities so that a collective and comprehensive response occurs. The response would be automatic and institutionalized throughout the organization. To further break down the Beehive Effect and the approach to pattern responses, four important aspects require specific attention.

1. Systematic and appropriate identification of patterns
2. Coordination of appropriate and effective responses
3. Accountability for ensuring responses occur consistently for every pattern
4. Evaluation of successful elimination of crimes and future patterns

Identification and Bulletins

Importantly, patterns are not counts of crime or identified via statistics or percent change

but by a crime analyst through a qualitative methodology.¹⁰ Police agencies must recognize that officers cannot be responsible for identifying patterns during their normal duties because they do not have the time or the access to crime databases and must focus on other priorities. Thus, to facilitate a *systematic* pattern response system, personnel must be assigned to conduct pattern analysis on a

“Importantly, patterns are not counts of crime or identified via statistics or percent change, but by a crime analyst through a qualitative methodology.”

continual basis. These crime analysts are trained in pattern identification methodology and have specific knowledge of the databases available in a police department. To this end, agencies must invest in the analysis capacity to consistently and effectively respond to patterns.

A pattern is not a cluster of residential burglaries in a particular area, but a group of residential burglaries occurring

in a specific location and linked by time of day, day of week, property taken, modus operandi, or other means. Crime analysts identify many types of patterns, as several examples illustrate.¹¹

- Series: A run of similar crimes committed by the same individual against one or various victims or targets (e.g., robbery of convenience stores by one offender)
- Spree: A pattern characterized by a high frequency of criminal activity to the extent that it appears almost continuous and seems to involve the same offender, usually over a short time span with no “cooling off” period (e.g., seven cars burglarized along the same street in one night)
- Hot spot: A specific location or small area where an unusual amount of criminal activity occurs committed by one or more offenders (e.g., residential burglaries in a 3-block area in a week)
- Hot product: A specific type of property targeted in the same or different types of crime (e.g., flat-screen TVs taken in commercial and residential burglaries)
- Hot target: A type of place frequently victimized but not necessarily in the same area (e.g., day-care centers)

where purses are being taken from vehicles while mothers drop off their children)

Once an agency identifies a pattern, it can summarize and format the information into a succinct, relevant pattern bulletin used to direct responses. Although the substantive information within the bulletin changes based on the type of pattern and crime, the format and basic components remain consistent. Each bulletin is actionable, wherein it provides information that compels response and guides resources toward the appropriate times, days, areas, and offenders. The bulletin is disseminated throughout the

police organization as soon as it is completed, rather than on a set publication schedule, so that immediate response can begin.

Systematic Response

Once an agency has identified a pattern threat, it should immediately and appropriately respond. The patrol division should take the lead because it is operational 24 hours a day, 7 days a week. Other divisions, such as criminal and special investigations, crime prevention, and public information can support patrol's response in ways appropriate to their functions. By sharing the workload, each division contributes a realistic amount of resources that together can result in a significant level of response.

Part of the development of a systematic pattern response system includes identifying the appropriate and effective potential responses for short-term crime patterns. Through research and practice, police have identified many effective tactics for short-term issues. These responses can be implemented whenever and wherever the pattern occurs or during normal waking/business hours.¹² They can be broken down into a list or "recipe" of responses and allocated to the appropriate division within the police agency, such as—

- employing, in the areas and times where a pattern occurs, directed patrol (in cars, on bikes, or on foot) that can make field contacts to deter offenders and provide potential investigative leads;¹³
- using surveillance in a particular area at a specific time to make an arrest;¹⁴
- conducting "sting" or "bait" operations where people or property have been targeted in a particular pattern;¹⁵
- clearing cases by using an arrest in one case to clear others in the pattern;
- contacting potential victims directly about the crime pattern and ways to protect themselves (according to research, crime prevention



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education works best when targeted at specific victims, times, and areas);¹⁶ and

- distributing pattern information to the public to encourage citizens to provide additional information (“tips”), to warn offenders, and to offer crime prevention advice.¹⁷

The author’s agency, the Port St. Lucie Police Department (PSLPD), requires responses to patterns from each division, with patrol taking the lead and overseeing the coordination of them. Creating the resources (e.g., purchasing bait vehicles, creating crime prevention flyers, staffing specialized units) and developing policy on the requirements (immediate and coordinated) ensure the department addresses patterns immediately, as well as consistently.

Not all responses, however, are required or appropriate for each pattern because the type of pattern and the seriousness and number of crimes in the pattern varies. For example, a series of street robberies in a residential neighborhood requires much more resources and response than a spree of car burglaries occurring in a night at an apartment complex. The PSLPD follows standard procedures when assigning the responses to its divisions based on their organizational charts and resource levels:

Neighborhood Policing Bureau (Patrol)

- Directed marked patrol in the pattern area (car or bike)
- Unmarked patrol in the pattern area
- DART (Directed Area Response Team): specialized unit (one sergeant and six officers) stops people in pattern area and conducts surveillance

“By sharing the workload, each division contributes a realistic amount of resources that together can result in a significant level of response.”

Criminal Investigations Bureau

- Crimes in each pattern area assigned to one detective
- Known offenders in pattern area contacted
- Bait car deployment in the pattern area
- Unmarked patrol/surveillance in the pattern area

Crime Prevention and Public Information

- Potential victims contacted directly via reverse 911, letters, flyers, and in person
- Media alerts

Accountability System

In the Stratified Model, an accountability system ensures that pattern responses are implemented immediately, systematically, and appropriately. The PSLPD began a Compstat-like process in 1999, but, more recently, has adapted it to facilitate crime reduction as outlined in the Stratified Model. Although district patrol commanders are ultimately responsible for the overall crime-reduction efforts, shift lieutenants (corresponding with when the pattern occurs) take the lead in patrol and are assigned the responsibility of making sure that pattern responses are overseen by sergeants and implemented by patrol officers and that support divisions and units are deployed appropriately.

Documentation is an important aspect of accountability that not only provides a record of the work being done but also recognizes efforts and reinforces the system. The PSLPD has taken advantage of its intranet system to facilitate documentation of pattern responses. When the crime analysts identify a pattern, they immediately

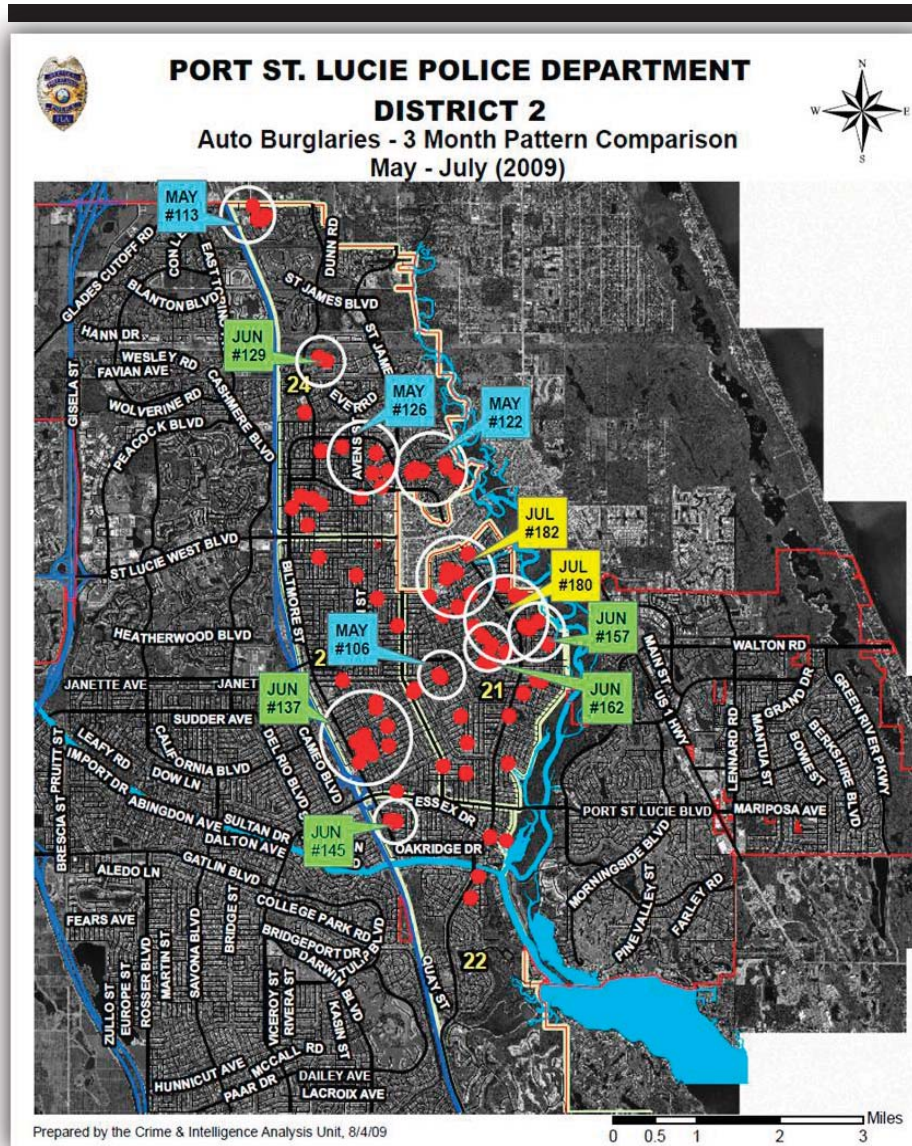


Figure 2

post the pattern bulletin on the agency's intranet system for sworn personnel to review. A pattern discussion board provides officers the capability to post discussion threads of information about their responses, as well as their knowledge of the pattern area, known offenders, and field interviews conducted. It also allows supervisors to monitor whether appropriate

responses are taking place. The threads enable commentary to occur in "real time," allowing information once passed haphazardly by word of mouth to be reviewed by all personnel. This helps inform all police personnel about the progress of pattern responses.

Officers, detectives, specialized units, crime prevention personnel, and anyone else

implementing part of the pattern response record the relevant information on the thread for everyone to see. This information also is archived, and the responsible sergeant or lieutenant creates a summary of the pattern from the thread information once it has been resolved. The patrol captain responsible for the area in which the pattern occurred receives this information so it can be discussed in the monthly meeting.

Response Evaluation

As part of the accountability structure, weekly "action oriented" meetings are held to systematically coordinate and review progress of pattern-response strategies among the police divisions, and monthly meetings are used to evaluate their effectiveness. The PSLPD's weekly meetings bring together patrol, investigations, and crime prevention captains and lieutenants to review the responses in progress, evaluate those coming to a close, discuss needed resources, and coordinate new responses that must be implemented. The monthly meetings make sure that responses are implemented consistently across regional areas, that adequate resources are provided, and that the responses are effective. In each monthly meeting, the patrol captains present the responses and their

results of any patterns occurring that month. The command staff uses a series of maps and statistics to determine whether pattern responses are effective or whether larger problems are emerging.

Figure 2 is an example of a map of one district for 3 months illustrating theft-from-vehicle offenses. It shows several isolated patterns in Zones 22 and 23 of District 2, while the reoccurring patterns in Zone 21 indicate that the responses may not be deployed effectively or quickly enough or that a different or immediate approach may be necessary. Importantly, the accountability processes facilitated through the intranet system, as well as in the weekly and monthly meetings, remain ongoing and consistent to ensure accountability and evaluation occur at every level of the organization.

Strategy Effectiveness

The PSLPD has made substantial strides over the past 6 years implementing and routinizing the pattern response strategy, as well as the other aspects of the Stratified Model. Some of the achievements include a significant increase in the crime analysis function. Two analysts create 5 to 10 pattern bulletins and 10 to 20 other analysis bulletins each month. Communication has improved

considerably among different divisions through the coordination of responses in the field and the weekly and monthly meetings. Also, major progress has occurred in the number of pattern responses, their consistency, and coordination among divisions, along with accountability at all levels. Accountability meetings are more focused and centered on crime-reduction

Documentation is an important aspect of accountability that not only provides a record of the work being done but also recognizes efforts and reinforces the system.

responses and their effectiveness and not simply bent on reviewing statistics or identifying clusters of crimes on a map.

Some evidence that the PSLPD's strategies are working is based on the most recent property crime statistics. Theft from vehicle has been one of the most frequent crimes and a major focus for pattern response in Port St. Lucie. A

82 percent increase in these crimes occurred between June 2004 through May 2005 and June 2007 through May 2008 (a 3-year period). From June 2007 through May 2008 and June 2008 through May 2009, a 1 percent increase of these crimes occurred, during which time the PSLPD implemented the pattern response system and the sharp incline seemed to taper off. The most recent comparison of June 2008 through May 2009 and June 2009 through May 2010 shows, for the first time in 5 years, a declining trend in these crimes, with a decrease of 22 percent. Also, interviews and discussions with personnel in the department revealed that, overall, officers and supervisors feel their strategies have become more effective. Moreover, they have received positive feedback from citizens about the information being provided on crime and disorder in their neighborhoods.

CONCLUSION

Faced with diminishing resources, police executives will need more efficient and focused approaches to implement crime-reduction strategies. The Stratified Model of Problem Solving, Analysis, and Accountability is a systematic approach to addressing crime and disorder at various levels (e.g., incidents, patterns, and problems) that

can be infused into the existing structure of police organizations with little cost. Patterns, arguably, represent the core component of the Stratified Model, as well as police departments' crime-reduction efforts, because they are realistic for police response, they rely on existing police resources. Also, research has shown that police can successfully address them, and everyone is concerned and supportive of their immediate resolution.

An effective systematic pattern response strategy is automatic and institutionalized into the daily business of policing and is analogous to a swarm of bees protecting its hive. A police department invests in crime analysis to consistently identify patterns. It responds to patterns with immediacy and coordination, as well as with purpose and teamwork. As part of the accountability structure, weekly meetings are action oriented, and monthly meetings are used to evaluate response effectiveness. As a result, implementing an effective Systematic Pattern Response Strategy in this way accomplishes the Beehive Effect. ♦

Endnotes

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Some evidence that the PSLPD's strategies are working is based on the most recent property crime statistics.

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Dr. Rachel Boba and its implementation of the Stratified Model. Also, the Stratified Model is the basis of an ongoing initiative by the state of Maryland through the Governor's Office of Crime Control and Prevention and the University of Maryland to implement and institutionalize Compstat in all Maryland police agencies, <http://www.compstat.umd.edu> (accessed April 30, 2010).

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Partners in the Battle

By Ricardo A. Martinez, M.S., M.A.

The topic of my speech is the FBI's partnership with law enforcement in the war on terrorism. In December 2001, FBI Director Robert Mueller restructured FBI Headquarters. As a result, four new executive assistant director positions were created to oversee counterterrorism and counterintelligence programs, criminal and cyber matters, law enforcement services, and administration. Additionally, the National Security Service also was created, combining the mission, capabilities, and resources of the FBI's counterterrorism, counterintelligence, and intelligence elements.

The FBI has been in existence for a century. It has seen its share of ups and downs, triumphs, and, yes, on occasion, failures. Agents have pursued

Mr. Martinez, a retired special agent, was chief of the FBI component of the National Gang Targeting, Enforcement, and Coordination Center (GangTECC) in Arlington, Virginia. He delivered this speech to the North Louisiana Association of Chiefs of Police in West Monroe on June 14, 2008.



bank robbers, locked up gangsters, tracked fugitives, put away pedophiles, and dismantled drug organizations. However, a new day has dawned. J. Edgar Hoover's FBI has changed dramatically in the past few years. It has had to realign its focus as a result of the calamitous events of September 11, 2001. The counterterrorism, counterintelligence, and cyber crime investigations and programs are critical to the FBI's ability to protect this country's national security. In the past few years, the FBI has conducted terrorist investigations in such far-flung places as Iraq, Afghanistan, Pakistan, the Philippines, Europe, and Africa; uncovered terrorist sleeper cells and disrupted their financial, communications, and operational lifelines here at home and abroad; and, in conjunction with federal, state, and local law enforcement, searched for and arrested the snipers who terrorized Maryland, Virginia, and our nation's capitol.

Today's criminals and terrorists are better organized, better equipped, and much more global than their predecessors. Globalization and the emergence of collaboration between criminal and terrorist enterprises demand a greater degree of synergism between the FBI, the intelligence community, and our law enforcement partners. Working hand in hand with our counterparts in law enforcement, the intelligence community, the military, and diplomatic circles, the FBI's job is to neutralize terrorist cells and operatives in the United States and to help dismantle terrorist networks worldwide.

Examples of partnerships between the FBI and local law enforcement in the war on terrorism abound. Seven men were arrested as they plotted to blow up the Sears Tower in Chicago and destroy FBI offices and other buildings throughout the

country. Law enforcement authorities uncovered a plot to bomb underwater New York City train tunnels to flood lower Manhattan. Six individuals were arrested in a plot to unleash a bloody massacre at the military base in Fort Dix, New Jersey. A plot to destroy JFK Airport in New York City by blowing up a jet fuel artery that runs through residential areas was foiled. These are but a few of a series of homegrown terrorism plots targeting high-profile American landmarks.

One of my critical missions as an FBI supervisor is simple: to build bridges and strengthen relationships between the FBI and the law enforcement community. The director is committed to providing better coordination and communication between the Bureau and its federal, state, local, tribal, and campus law enforcement partners on a national level.

During the height of Great Britain's struggles with the Irish Republican Army (IRA) in Northern Ireland, then Prime Minister Margaret Thatcher narrowly missed being seriously injured or killed when an IRA bomb exploded at the Grand Hotel in Brighton, England, on October 12, 1984. The

IRA provided this chilling statement directed at the British government after their unsuccessful attempt to assassinate Prime Minister Thatcher: "Today we were unlucky! But remember, we have only to be lucky once. You will have to be lucky always!" Unfortunately, on July 7, 2005, a cabal of Islamic terrorists "got lucky" in London, England.

That chilling admonition should remind us that we always must remain vigilant in our fight against those who hate us and would destroy our way of life. The FBI cannot do it alone! The local police departments, state troopers, campus police officers, tribal law enforcement agencies, sheriff's

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**Examples of
partnerships between
the FBI and local
law enforcement in
the war on terrorism
abound.**
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offices, and other federal officers cannot shoulder this solemn responsibility by themselves. You, I, and every law enforcement officer in this nation must, and have, become full partners in the war on terrorism!

One of my favorite quotes is by the 19th century British author and philosopher John Stuart Mill: "War is an ugly thing, but not the ugliest of things. The decayed and degraded state of moral and patriotic feeling which thinks that nothing is worth war is much worse. The person who has nothing for which he is willing to fight, nothing which is more important than his own personal safety, is a

miserable creature and has no chance of being free unless made and kept so by the exertions of better men than himself."

Let me conclude by personally expressing the FBI's gratitude for your dedication and service to our country. Thank you for being America's front line soldiers in the war on terror just as assuredly as our brave soldiers in Iraq and Afghanistan are fighting the terrorist insurgents, al-Qaeda, and the Taliban. Thank you for your patriotism, your sacrifices, and your exertions on behalf of this great country of ours! God bless you, and God bless the United States of America! ♦

Unusual Weapons

Cartridge Knives

These photos depict what appears to be a cartridge in a metallic case. Instead, a metal blade is inside the cartridge. Such objects pose a serious threat to law enforcement officers.



Bulletin Honors

Odessa Peace Officers Memorial

The Odessa, Texas, Police Department established the Odessa Peace Officers Memorial Foundation in October 2007 to honor its fallen officers. Motorcycle accidents claimed the lives of two officers; Corporal Gordon Terry Toal died while acting as a funeral escort in 1982, and Officer Scott Stanton Smith suffered fatal injuries when a motor vehicle struck him as he responded to a burglary-in-progress call in 1988. More recently, Corporals Arlie Jones, John “Scott” Gardner, and Abel Marquez died from gunshot wounds they sustained while responding to a domestic disturbance call in September 2007.

Since 2007, the foundation diligently has raised funds to build a memorial for the department’s five fallen officers. However, the foundation ultimately strives to serve any Texas law enforcement officer in times of crisis; it supports the families and widows of all officers who sustained injuries or paid the ultimate sacrifice in the line of duty.

The foundation finally reached its goal and built a memorial for its fallen officers. The Odessa Police Department unveiled a statue of St. Michael the Archangel, the patron saint of police officers, on September 3, 2010. The department and foundation feel very proud of their monument and their efforts to honor law enforcement officers around the world.





The “Public Safety” Exception to Miranda

By CARL A. BENOIT, J.D.

After 44 years, the *Miranda* decision stands as a monolith in police procedure.¹ Its requirements are so well known that the Supreme Court remarked, “*Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture.”² And, although the Supreme Court has clarified and refined *Miranda* over the

years, its central requirements are clear.³ Whenever the prosecution seeks in its direct case to introduce a statement made by a suspect while in custody and in response to interrogation, it must prove that the subject was warned of specific rights and voluntarily waived those rights.⁴ The penalty imposed on the prosecution for failing to prove that the *Miranda* procedures were properly followed is harsh.

While some secondary and limited uses of statements obtained in violation of *Miranda* are permitted, such statements are presumed to be coerced and cannot be introduced by the prosecution in its direct case.⁵

The strength of the *Miranda* decision is its clarity in its nearly unwavering protection of a suspect’s Fifth Amendment protection against self-incrimination. The commitment

to this rule is so strong that the Supreme Court has recognized only one exception to the *Miranda* rule—the “public safety” exception—which permits law enforcement to engage in a limited and focused unwarned interrogation and allows the government to introduce the statement as direct evidence.

Recent and well-publicized events, including the attempted bombing of Northwest Airlines Flight 235 near Detroit, Michigan, on December 25, 2009, and the attempted bombing in New York City’s Times Square in May 2010, highlight the importance of this exception.⁶ Those current events, occurring in a time of heightened vigilance against terrorist acts, place a spotlight on this law enforcement tool, which, although 26 years old, may play a vital

role in protecting public safety while also permitting statements obtained under this exception to be used as evidence in a criminal prosecution. In brief, and as discussed in this article, police officers confronting situations that create a danger to themselves or others may ask questions designed to neutralize the threat without first providing a warning of rights. This article discusses the origins of the public safety exception and provides guidance for law enforcement officers confronted with an emergency that may require interrogating a suspect held in custody about an imminent threat to public safety without providing *Miranda* warnings.

ORIGIN OF THE RULE

The origin of the public safety exception to *Miranda*,

the case of *New York v. Quarles*, began in the early morning hours of September 11, 1980. While on routine patrol in Queens, New York, two New York City police officers were approached by a young woman who told them that she had just been raped. She described the assailant as a black male, approximately 6 feet tall, wearing a leather jacket with “Big Ben” printed in yellow letters on the back. The woman told the officers that the man had just entered a nearby supermarket and that he was carrying a gun.

The officers drove to the supermarket, and one entered the store while the other radioed for assistance. A man matching the description was near a checkout counter, but upon seeing the officer, ran to the back of the store. The officer pursued the subject, but lost sight of him for several seconds as the individual turned a corner at the end of an aisle. Upon finding the subject, the officer ordered him to stop and to put his hands over his head. As backup personnel arrived, the officer frisked the man and discovered he was wearing an empty shoulder holster. After handcuffing him, the officer asked where the gun was. The man gestured toward empty milk cartons and said, “The gun is over there.” The officer found and removed a loaded handgun



Special Agent Benoit serves as a legal instructor at the FBI Academy.

“Recent and well-publicized events...highlight the importance of this exception.”

from a carton, formally placed the man under arrest, and then read the *Miranda* rights to him. The man waived his rights and answered questions about the ownership of the gun and where it was purchased.⁷

The state of New York charged the man, identified as Benjamin Quarles, for criminal possession of a weapon.⁸ The trial court excluded the statement “The gun is over there,” as well as the handgun, on the grounds that the officer did not give Quarles the warnings required by *Miranda v. Arizona*.⁹ After an appellate court affirmed the decision, the case was appealed to the New York State Court of Appeals.

The New York Court of Appeals upheld the trial court decision by a 4 to 3 vote.¹⁰ According to the New York Court of Appeals, because Quarles responded “to the police interrogation while he was in custody, [and] before he had been given the preinterrogation warnings...,” the lower courts properly suppressed the statement and the gun.¹¹ The court refused to recognize an emergency exception to *Miranda* and noted that even if there were such an exception, there was “no evidence in the record before us that there were exigent circumstances posing a risk to the public safety or that the police interrogation was prompted by such concern.”¹²

In dissent, Judge Watchler believed that there was a public safety exception to *Miranda* and that the facts presented such a situation. Judge Watchler noted that “*Miranda* was never intended to enable a criminal defendant to thwart official attempts to protect the general public against an imminent, immediate and grave risk of serious physical harm reasonably perceived.”¹³ He also believed there was “a very real threat of

on the admissibility of the statement and the handgun, a consideration of a summary of the steps used by the Court is important.

The first step toward this conclusion was a discussion by the Court of the relationship between the *Miranda* requirements and the Fifth Amendment to the U.S. Constitution. The Fifth Amendment provides that “[n]o person...shall be compelled in any criminal case to

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The Quarles case provides a framework that police officers can use to assess a particular situation, determine whether the exception is available, and ensure that their questioning remains within the scope of the rule.

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possible physical harm which could result from a weapon being at large.”¹⁴ The state of New York appealed the case to the Supreme Court.

The Supreme Court ruled on these facts that a public safety exception to *Miranda* existed. To understand how the Court reached this conclusion and the implications of this exception

be a witness against himself.”¹⁵ The Fifth Amendment “does not prohibit all incriminating admissions,” only those that are “officially coerced self-accusations....”¹⁶ In *Miranda*, the Supreme Court “for the first time extended the Fifth Amendment privilege against compulsory self-incrimination to individuals subjected to

custodial interrogation by the police.”¹⁷ Thus, *Miranda* created a presumption that “interrogation in custodial circumstances is inherently coercive” and that statements obtained under those circumstances “are inadmissible unless the subject is specifically informed of his *Miranda* rights and freely decides to forgo those rights.”¹⁸ Importantly, the Court noted that *Miranda* warnings were not required by the Constitution, but were prophylactic measures designed to provide protection for the Fifth Amendment privilege against self-incrimination.¹⁹

After providing this explanation of the relationship between the Fifth Amendment and *Miranda*, the Court explained that Quarles did not claim that his statements were “*actually* compelled by police conduct which overcame his will to resist.”²⁰ Had police officers obtained an involuntary or coerced statement from Quarles in violation of the due process clause of the Fifth Amendment, both the statement and the handgun would have been suppressed.²¹ And, in this regard, the Court explained that the failure to administer *Miranda* warnings does not, standing alone, make a confession involuntary in violation of the Constitution.²²

The Supreme Court then proceeded to determine whether the *Miranda* rule was implicated

in this case and agreed with the New York Court of Appeals that it was. The Court agreed with the New York courts that Quarles was in custody. As the Court noted, “Quarles was surrounded by at least four police officers and was handcuffed when the questioning at issue took place.”²³ Therefore, on the facts of the case, the Court found that the *Miranda* decision was clearly implicated. The Court then referred to the determination by the New York



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courts that there was nothing in the record indicating that any of the police officers were concerned with their safety when they questioned Quarles. The Supreme Court noted that the New York Court of Appeals did not address the issue of whether there was an exception to *Miranda* in cases that involve

a danger to the public “because the lower courts in New York made no factual determination that the police had acted with that motive.”²⁴

The Supreme Court chose to address whether a public safety exception to *Miranda* should exist. In this regard, the Court held that: “there is a ‘public safety’ exception to the requirement that *Miranda* warnings be given before a suspect’s answers may be admitted into evidence, and the exception does not depend upon the motivation of the individual officers involved.”²⁵ Thus, according to the Court, without regard to the actual motivation of the individual officers, *Miranda* need not be strictly followed in situations “in which police officers ask questions reasonably prompted by a concern for the public safety.”²⁶

The Court then applied the facts to the situation confronting them when Quarles was arrested. In the course of arresting Quarles, it became apparent that Quarles had removed the handgun and discarded it within the store. While the location of the handgun remained undetermined, it posed a danger to public safety.²⁷ In this case, the officer needed an answer to the question about the location of the gun to ensure that its

concealment in a public location would not endanger the public. The immediate questioning of Quarles was directed specifically at resolving this emergency. Since the questioning of Quarles was prompted by concern for public safety, the officers were not required to provide *Miranda* warnings to Quarles first. Therefore, the statement made by Quarles about the location of the handgun was admissible.²⁸ In addition, because the Court found there was no violation of *Miranda*, the handgun also was admissible. The Court declined to address whether the handgun would have been suppressed if the statements were found to be inadmissible.²⁹

FRAMEWORK OF THE EXCEPTION

The *Quarles* case provides a framework that police officers can use to assess a particular situation, determine whether the exception is available, and ensure that their questioning remains within the scope of the rule. This framework includes the presence of a public safety concern, limited questioning, and voluntariness.

Public Safety Concern

According to the Supreme Court, the public safety exception is triggered when police officers have an objectively reasonable need to protect the

police or the public from immediate danger. Because the standard is objective, the availability of the exception does not depend on subjective motivation of the officers. Legitimate concerns for officer safety or public safety prompting unwarned custodial questioning arise in a variety of contexts. A common factor that can be gleaned from the courts addressing this

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...the public safety exception is triggered when police officers have an objectively reasonable need to protect the police or the public from immediate danger.

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issue is the prior knowledge or awareness of specific facts or circumstances that give rise to the imminent safety concern that prompted the questioning.

For example, in *U.S. v. Talley*, police officers executing a federal arrest warrant at a residence heard sounds indicating that a number of unexpected people were inside the home.³⁰ The officers returned to their vehicles to get their bulletproof vests and then returned to the

front door. After the defendant and another individual were secured by a police officer just inside the residence, the officer noticed other people inside the house who had not complied with the demand to come outside. The officer entered further into the residence to gain control of the unsecured subjects and tripped over a trash can that contained bullets and a magazine for a semiautomatic pistol. The officer returned to the two subjects and asked, “Where is the gun?” The defendant told the officer that the gun was inside a vacuum cleaner, from where it was retrieved. The defendant sought to suppress the gun, claiming the officer did not provide him his *Miranda* warnings first. The district court suppressed the defendant’s statement, finding a violation of *Miranda*. The circuit court reversed and upheld the admissibility of the statement. The court stressed the context of the arrest in finding that the public safety exception was applicable. The court stated that “[o]nce Officer Rush had seen the magazine, he had reason to believe a gun was nearby and was justified, under *Quarles*, in asking his question prior to administering a *Miranda* warning.”³¹

In *U.S. v. Jones*, members of a fugitive task force arrested Phillip Jones for a homicide he committed with a handgun on

June 27, 2006.³² Members of the task force met on August 10, 2006, the day of the arrest, and were briefed about the nature of the homicide, the possibility that Jones may have two weapons, and that he had two previous convictions for gun and drug offenses. After going to search for Jones in a dangerous high-crime area in northeast Washington, D.C., Deputy U.S. Marshal Cyphers made eye contact with Jones, who immediately fled. The marshal pursued and caught Jones in a partially lit stairwell of an apartment building. At some point during the chase, Cyphers heard a gunshot fired. Within 30 seconds of arresting Jones and before providing the *Miranda* warnings, Cyphers asked if Jones had anything on him. Jones

replied, “I have a burner in my waistband.”³³ Jones sought to suppress his statement. The circuit court had little difficulty in determining that “Cypher’s questions fell squarely within the public safety exception.”³⁴ The circuit court stressed the information that Deputy U.S. Marshal Cyphers knew about Jones *before* making the arrest, as well as the circumstances surrounding the chase and arrest, concluding that the question was prompted by a concern for public safety.

In each of the two cases above, information that came to the attention of the law enforcement officers concerning an immediate threat to safety prompted the officers to ask questions directed at neutralizing the danger. In both cases, the reviewing

courts agreed with the officers that the information prompted a public safety concern.

Limited Questioning

The *Quarles* Court made clear that only those questions necessary for the police “to secure their own safety or the safety of the public” were permitted under the public safety exception.³⁵ In *U.S. v. Khalil*, New York City police officers raided an apartment in Brooklyn after they received information that Khalil and Abu Mezer had bombs in their apartment and were planning to detonate them.³⁶ During the raid, both men were shot and wounded as one of them grabbed the gun of a police officer and the other crawled toward a black bag believed to contain a bomb. When the officers looked inside the black bag, they saw pipe bombs and observed that a switch on one bomb was flipped.

Officers went to the hospital to question Abu Mezer about the bombs. They asked Abu Mezer “how many bombs there were, how many switches were on each bomb, which wires should be cut to disarm the bombs, and whether there were any timers.”³⁷ Abu Mezer answered each question and also was asked whether he planned to kill himself in the explosion. He responded by saying, “Poof.”³⁸



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Abu Mezer sought to suppress each of his statements, but the trial court permitted them, ruling that they fell within the public safety exception. On appeal, Abu Mezer only challenged the admissibility of the last question, whether he intended to kill himself when detonating the bombs. He claimed the question was unrelated to public safety. The circuit court disagreed and noted “Abu Mezer’s vision as to whether or not he would survive his attempt to detonate the bomb had the potential for shedding light on the bomb’s stability.”³⁹

A common theme throughout cases such as this is the importance of limiting the interrogation of a subject to questions directed at eliminating the emergency. Following *Quarles*, at least two federal circuit courts of appeals have addressed the issue of the effect of an invocation of a right on the exception. In *U.S. v. DeSantis*, the Ninth Circuit Court of Appeals held that the public safety exception applies even after the invocation of counsel.⁴⁰ According to the court: “The same consideration that allows the police to dispense with providing *Miranda* warnings in a public safety situation also would permit them to dispense with the prophylactic safeguard that forbids initiating further questioning of an accused who requests counsel.”⁴¹

In *U.S. v. Mobley*, the Fourth Circuit Court of Appeals also ruled that the public safety exception applied even when the subject had invoked his right to counsel.⁴² The court recognized that a threat to public safety still may exist even after *Miranda* rights are provided and invoked.

made within the requirements of the due process clause.⁴⁵ This test requires that a court review the “totality of the circumstances” to determine whether the subject’s will was overborne by police conduct. If a court finds that the questioning of a subject, even in the presence of a situation involving public

Once the questions turn from those designed to resolve the concern for safety to questions designed solely to elicit incriminating statements, the questioning falls...within the traditional rules of Miranda.

Voluntariness

Voluntariness is the linchpin of the admissibility of any statement obtained as a result of government conduct.⁴³ Thus, statements obtained by the government under the public safety exception cannot be coerced or obtained through tactics that violate fundamental notions of due process.⁴⁴ Here, it is worth mentioning that prior to the *Miranda* decision, the only test used to determine the admissibility of statements in federal court was whether the statement was voluntarily

safety, violated due process standards, the statement will be suppressed.⁴⁶

In the *Khalil* case, Abu Mezer also argued that the statements he made to police officers while he was in the hospital should be suppressed because they were not voluntary. Testimony from the interviewing agent indicated that although Abu Mezer was in pain, “he was alert, seemed to understand the questions, and gave responsive answers.”⁴⁷ Testimony from the surgeon indicated that Abu Mezer “was alert and had no

difficulty understanding her explanation of the surgical procedure he would undergo.”⁴⁸ The district court found that under the totality of the circumstances, Abu Mezer’s statements were voluntary, and the court of appeals upheld this determination.

Police officers must be vigilant to ensure that the questioning and other actions of the police, even if prompted by an emergency situation involving public safety, permits subjects to exercise their free will when deciding to answer questions. This exception does not permit police officers to compel a statement from a subject. It simply permits them to question a subject before providing any *Miranda* warnings to resolve an imminent public safety concern.

CONCLUSION

The “public safety” exception to *Miranda* is a powerful tool with a modern application for law enforcement. When police officers are confronted by a concern for public safety, *Miranda* warnings need not be provided prior to asking questions directed at neutralizing an imminent threat, and voluntary statements made in response to such narrowly tailored questions can be admitted at trial. Once the questions turn from those designed to resolve the concern for safety to questions designed solely to elicit incriminating statements, the questioning falls

outside the scope of the exception and within the traditional rules of *Miranda*. ♦

Endnotes

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

² *Dickerson v. U.S.*, 530 U.S. 428, (2000).

³ *Berghuis v. Thompkins*, 560 U.S. ____ (2010) and *Maryland v. Shatzer*, 559 U.S. ____ (2010). See also Jonathan L. Rudd, “The Supreme Court Revisits the *Miranda* Right to Silence,” *FBI Law Enforcement Bulletin*, September 2010, 25-31; and Kenneth A. Myers, “Fifth Amendment Protection and Break in Custody,” *FBI Law Enforcement Bulletin*, May 2010, 26-32.

⁴ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁵ *Miranda v. Arizona*, 389 U.S. 436; *Michigan v. Tucker*, 417 U.S. 433 (1974); *United States v. Patane*, 542 U.S. 630 (2004); *Oregon v. Hass*, 420 U.S. 714 (1975).

⁶ Holder, Eric, Letter to Senator Mitch McConnell, United States Department Of Justice. 3 Feb. 2010. Web. 8 December 2010.

⁷ *New York v. Quarles*, 467 U.S. 649, 651-652 (1984).

⁸ There is no indication as to why the state did not pursue the original charge of rape.

⁹ *Quarles* at 652.

¹⁰ *People v. Quarles*, 58 N.Y.2d 664 (1982).

¹¹ *Id.* at 666.

¹² *Id.*

¹³ *Id.* at 671.

¹⁴ *Id.*

¹⁵ U.S. Const. Amend. V.

¹⁶ *New York v. Quarles*, 467 U.S. 649, 654 (1984). See also *Miranda v. Arizona*, 384 U.S. 436, 460-461, 467 (1966).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* Citing *Michigan v. Tucker*, 417 U.S. 433 (1974).

²⁰ *Id.* (emphasis added).

²¹ Add cite regarding remedy for 5th Amendment violation.

²² *Id.* at 655 fn. 5.

²³ *Id.*

²⁴ *Id.* *People v. Quarles*, 58 N.Y.2d 664, 666 (1982).

²⁵ *Id.* at 655, 656.

²⁶ *Id.* at 656.

²⁷ *Id.* at 657.

²⁸ *Id.* at 660.

²⁹ *Id.* See *U.S. v. Patane*.

³⁰ 275 F.3d 560 (6th Cir. 2001).

³¹ *Id.* at 564.

³² 567 F.3d 712 (D.C. Cir. 2009).

³³ *Id.* at 713-714.

³⁴ *Id.* at 715.

³⁵ *New York v. Quarles*, 467 U.S. 649, 659 (1984).

³⁶ 214 F.3d 111 (2d Cir. 2000).

³⁷ *Id.* at 115.

³⁸ *Id.*

³⁹ *Id.* at 121.

⁴⁰ 870 F.2d 536 (9th Cir. 1989).

⁴¹ *Id.* at 541.

⁴² 40 F.3d 688 (4th Cir. 1994).

⁴³ *Colorado v. Connelly*, 479 U.S. 157 (1986).

⁴⁴ *New York v. Quarles*, 467 U.S. at 655. The *Quarles* Court made clear that Quarles did not make any claim that the police compelled his statements. The Court also noted that Quarles was free to argue “that his statement was coerced under traditional due process standards.” *Id.* at 655 fn. 5.

⁴⁵ See *New York v. Quarles*, 467 U.S. 649, 661 (1984) (Justice O’Connor concurring in the judgment and dissenting in part).

⁴⁶ See *U.S. v. Patane*, (2004) (Plurality opinion); *Chavez v. Martinez*, 538 U.S. 760 (2003) (Plurality opinion).

⁴⁷ 214 F.3d 111, 121 (2d Cir. 2000).

⁴⁸ *Id.*

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.

Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.



Officer Plezia

Officer/Flight Medic Thaddeus "Ted" Plezia of the Nassau County, New York, Police Department had just finished his shift when he spotted several cars parked at a railroad crossing on his route home. He observed smoke and steam in the air and a car with sparks and smoke billowing from beneath it parked on the railroad tracks. Officer Plezia parked his personal vehicle and approached the scene, where he heard voices yelling, "Get out of the car!" and "Don't touch the car!" He could not tell if the vehicle was on the electrified third rail. Further, he did not realize the fire soon would spread to the upper part of the vehicle and did not even know if the railroad yet had halted trains or cut power to the third rail. Officer Plezia had no way to obtain answers to any of these questions or request back up. Nonetheless, he ignored the imminent danger to his own life and reached into the burning vehicle to remove the victim from the car. After struggling briefly, the officer successfully untangled the victim from the car and they both fell safely onto the eastbound tracks. Officer Plezia and a bystander then helped the victim to safety away from the burning car.



Lieutenant Morgan

Lieutenant John Morgan of the McMinnville, Tennessee, Police Department responded to an emergency call about a fire on the third floor of a motel. The manager previously had tried to extinguish the flames with buckets of water, but the growing volumes of flames and heavy black smoke prevented him from entering the room. When Lieutenant Morgan arrived at the scene, the manager informed him that a guest remained inside the burning room, at which point the lieutenant immediately rushed upstairs to quell the flames with a fire extinguisher. Once inside the room, he located the individual, who was intoxicated, severely burned, and unable to escape. Although the guest acted combatively when the officer attempted to rescue him, Lieutenant Morgan remained persistent and helped the injured man to safety. Emergency medical personnel soon arrived and transported the victim to the hospital.

Nominations for the **Bulletin Notes** should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions can be mailed to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Outreach and Communications Unit, Quantico, VA 22135 or e-mailed to leb@fbiacademy.edu.

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Patch Call



The patch of the Oxford, Pennsylvania, Police Department depicts historical landmarks located throughout Oxford. The red building represents the train station that housed the police department from the 1950s until 2009. The tree recalls the 300-year old "William Penn Oak," located in the center of town. The foreground includes the town clock from Oxford's business district; its hands remain fixed at 9:11 as a tribute to all those who lost their lives on September 11, 2001.



Coos Bay, Oregon, is the largest deep-water shipping port between San Francisco, California, and Portland, Oregon. As such, the city's police department patch illustrates the town's importance to the West Coast shipping industry. Log ships and tug boats, like those featured in the center of the patch, routinely maneuver through the city's historical industrial bay.